IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.260 OF 2004

Rajkumar Jhamnadas Kalani & Anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

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Mr.R.D.Suryavanshi for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 3, 2005.

P.C.

1. Heard Counsel for the parties.

2. I see no reason to depart from the conclusion reached by the Court below in rejecting the Application for discharge preferred by the present Applicants. The Court below has recorded reasons. Besides, the evidence does support the position that gold was received by the Applicants from persons who were not authorised to sell and

for the time being, the evidence already on record, if unrebutted, would result in conviction of the Applicants.

3. The argument that ingredients of Section 411 of the Indian Penal Code are not made out, clearly overlooks that the property was not received knowingly or dishonestly, is a defence, which will have to be established at the trial. Reliance was placed on the decision of the Apex Court reported in **AIR 1977 SC 1489 in the case of State of Karnataka vs. L.Munishwamy & Ors.** That decision is of no avail to the present Applicants. As in my opinion, the Court below has applied the correct principle for considering discharge application; at this stage, there is no question of evaluating the evidence on record to find out whether the case would end in conviction or not. Hence, dismissed.

A.M.KHANWILKAR, J.